Supreme Court, U.S.
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No. 06-85

In The

Supreme Court of the United States

MARICOPA COUNTY SHERIFF'S OFFICE, JOE ARPAIO, THE DULY ELECTED SHERIFF OF MARICOPA COUNTY, et al.,

Petitioners,

v.

U.S. DISTRICT COURT FOR THE DISTRICT OF ARIZONA,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Whether the Ninth Circuit erred in declining jurisdiction as to Petitioners' Writ of Mandamus where the District Court has failed to make a ruling upon Petitioners' Motion to Terminate this litigation pursuant to 18 U.S.C. § 3626, which has been pending since September 25, 2001, and where the same statute requires a prompt ruling on such a motion.

2. Whether the Ninth Circuit erred in declining jurisdiction as to Petitioners' Writ of Mandamus where the District Court has failed to terminate this litigation pursuant to 18 U.S.C. § 3626, and where the same statute specifies that prospective relief related to jail operations that were in existence when the statute was enacted becomes terminable no later than April 26, 1998.

LIST OF PARTIES

In addition to those listed in the caption, Petitioners, Defendants in the underlying action, include the Maricopa County (Arizona) Board of Supervisors, which includes supervisors Fulton Brock, Don Stapley, Andrew Kunasek, Max W. Wilson, and Mary Rose Wilcox. Some of the Petitioners have replaced former parties to this lawsuit by virtue of elections during the course of this litigation. Accordingly, some documents in the Appendix to this Writ may refer to parties who no longer hold office in Arizona.

Respondent is the United States District Court for the District of Arizona.

Real Parties in Interest are pretrial detainees in the Maricopa County jails and include named class members Damian Hart, Michael G. McKane and Bartholomew L. Trumble, who are no longer in custody of the Maricopa County jails.

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PETITION FOR WRIT OF CERTIORARI

Petitioners respectfully petition for a Writ of Certiorari to review the United States Court of Appeals for the Ninth Circuit's denial of Petitioners' Writ of Mandamus.

OPINIONS BELOW

There was no formal opinion of the District Court. No opinion was rendered by the United States Court of Appeals for the Ninth Circuit. The Ninth Circuit's Order denying Petitioners' Writ of Mandamus and the Ninth Circuit's Order denying Petitioners' Motion for Reconsideration are respectively set forth at App. 1 and App. 35.

JURISDICTION

The Order of the United States Court of Appeals for the Ninth Circuit denying Petitioners' Writ of Mandamus was filed on April 19, 2006. On May 19, 2006, the Ninth Circuit denied Petitioners' Motion for Reconsideration of the April 19, 2006, Order. This Petition for a Writ of Certiorari is being filed within the prescribed 90-day period after April 19, 2006. Jurisdiction is conferred on this Court by 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS

This case involves the Prison Litigation Reform Act, Pub.L. No. 104-134, 110 Stat. 1321-66 (the "PLRA"). The

specific statute involved is 18 U.S.C. § 3626, which is set forth at App. 36.

STATEMENT OF CASE

A group of pretrial detainees held in the Maricopa County, Arizona jail system initiated this institutional reform class action in 1977, alleging violations of their constitutional rights. In March 1981, the parties entered into a consent decree that addressed and regulated various aspects of Maricopa County jail operations as they applied to pretrial detainees ("1981 Judgment"). The 1981 Judgment, as supplemented by certain subsequent amendments, additions and supplemental stipulations, continued to govern certain aspects of the Maricopa County jail operations until it was superseded by another consent decree entered pursuant to stipulation of the parties on January 10, 1995 ("1995 Judgment"). By its terms, the 1995 Judgment superseded the 1981 Judgment, and all subsequent amendments, additions and supplemental stipulations relating thereto, and was designed to control the future direction of this action. The 1995 Judgment imposed certain obligations on the Maricopa County Sheriff's Office and the Maricopa County Board of Supervisors, and established certain goals with respect to the operation of the Maricopa County jail system.

In April 1998, Petitioners moved for the termination of this case and the 1995 Judgment for the first time based upon the decree termination provisions of the PLRA, 18 U.S.C. § 3626(b). The District Court thereafter, in September 1998, entered its Order denying Petitioners' Motion to Terminate. In October 1998, Petitioners filed their Notice

of Appeal with the Ninth Circuit, appealing the District Court's Order denying Petitioners' Motion to Terminate. In January 2001, the Ninth Circuit filed its Memorandum Disposition, which remanded this case for further proceedings consistent with *Gilmore v. California*, 220 F.3d 987 (9th Cir. 2000).[1]

In September 2001, the Petitioners renewed their Motion to Terminate this litigation. To date, the District Court has not ruled on Petitioners' Motion to Terminate even though 18 U.S.C. § 3626(e)(1) requires the District Court to issue a "prompt" ruling, and the PLRA makes clear that the statutory life of the 1995 Judgment expired on April 26, 1998, pursuant to U.S.C. § 3626(b)(1)(A)(iii). On February 6, 2006, Petitioners filed a Writ of Mandamus with the Ninth Circuit, which was denied by a panel of the Ninth Circuit on April 19, 2006. Petitioners respectfully request that a Writ of Certiorari issue to review the Ninth Circuit's denial of Petitioners' Writ of Mandamus.

REASONS FOR GRANTING THE WRIT

I. Introduction

Petitioners concede that the remedy of mandamus is a drastic one, which should only be used in extraordinary situations. *Will v. United States*, 389 U.S. 90, 95 (1967). However, it is equally true that, pursuant to 18 U.S.C. § 3626(e)(1), the District Court was to act "*promptly*" in ruling on Petitioners' Motion to Terminate, which was filed

[1] The Court's Memorandum Disposition, attached hereto at App. 2, mistakenly referred to 18 U.S.C. § 3626(b) as 18 U.S.C. § 3526(b).

on September 25, 2001. In 1997, Congress amended the PLRA to provide that "[m]andamus shall lie to remedy any failure to issue a prompt ruling on such a motion," in order "to make clear that mandamus relief is available to compel the court to issue a ruling on a pending motion. . . ." 18 U.S.C. § 3626(e)(1); H.R. CONF. REP. NO. 105-405, at 133 (1997). Therefore, the Ninth Circuit erred in denying Petitioners' Writ of Mandamus because, to date, the District Court has not yet ruled upon Petitioners' Motion to Terminate, even though it has been pending since September 25, 2001.

II. The Ninth Circuit Erred in Denying Petitioners' Writ of Mandamus Where the District Court has not "Promptly" Ruled upon Petitioners' Motion to Terminate.

Congress enacted the PLRA on April 26, 1996, with the clear intent of terminating prospective relief in prison condition cases such as this one. Pursuant to 18 U.S.C. § 3626(b)(1), any prospective relief becomes terminable with respect to existing prospective relief orders, at the latest, two years after the imposition of the PLRA. This section is subject to the court making written findings that there exists current and ongoing constitutional violations, as outlined in 18 U.S.C. § 3626(b)(3). Furthermore, any "prospective relief" that exceeds the constitutional minimum must be terminated immediately regardless of when it was granted. 18 U.S.C. § 3626(b)(2); *see also, Gilmore v. California*, 220 F.3d 987, 999 (9th Cir. 2000) (Prospective relief "that exceeds the constitutional minimum must be terminated regardless of when it was granted"). The requirements of the 1995 Judgment, which is set forth at App. 4, exceed the requirements of the Constitution. Nevertheless,

because the parties are past the two-year presumptive limit of the PLRA pursuant to 18 U.S.C. § 3626(b)(1), there is no need to discuss the specific provisions of the 1995 Judgment. However, it is critical that the District Court has not found any current and ongoing violations in the Maricopa County jails that would preclude the termination of the prospective relief. There have not been any evidentiary hearings in this matter since January 22, 2004.

The statutory life of the 1995 Judgment – two (2) years from enactment of the PLRA – expired on April 26, 1998. 18 U.S.C. § 3626(b)(1)(A)(iii). As of that date, 18 U.S.C. § 3626(b)(1) requires termination "upon motion of any party." Pursuant to 18 U.S.C. § 3626(e)(1), the District Court was to act promptly in ruling upon Petitioners' Motion to Terminate. Here, Petitioners' Motion was filed on September 25, 2001, but the District Court has not ruled. Other jurisdictions have recognized the intent of Congress in terminating cases such as this one. In a similar case interpreting the PLRA, the Court of Appeals for the Seventh Circuit determined that, under the PLRA, the District Court erred by letting *more than a year* pass without action on a motion to terminate prospective relief, and then terminating the decree without making any findings. *Berwanger v. Cottey*, 178 F.3d 834 (7th Cir. 1999); *see also*, *In re Scott*, 163 F.3d 282 (5th Cir. 1998) (finding that where *sixteen months* passed since the Court's last ruling and the District Court still had not yet ruled on the defendants' motion to terminate the litigation under the PLRA, the Court was inclined to grant the writ of mandamus and order the District Court to rule instanter, but did not because the District Court scheduled its evidentiary hearing). Here, the Ninth Circuit remanded this case to

the District Court on January 25, 2001 with instructions to follow *Gilmore v. California*, 220 F.3d 987 (9th Cir. 2000).[2] However, to date, the District Court has not made any progress in terminating this litigation, contrary to the clear and unambiguous instructions of the United States Court of Appeals for the Ninth Circuit and Congress.

Although 18 U.S.C. § 3626(e)(2) mandates that the provisions of the 1995 Judgment are stayed, Petitioners have been harmed in numerous ways. The past five years have been marked by an unending and costly fishing expedition by Real Parties in Interest in an attempt to discover constitutional violations at the Maricopa County jails. Real Parties in Interest seek discovery related to current jail conditions, even though, in evaluating Petitioners' pending Motion to Terminate, the District Court must examine the jail conditions "as of the time termination is sought." *Gilmore v. California*, 220 F.3d 987, 1010 (9th Cir. 2000) citing *Benjamin v. Jacobson*, 172 F.3d 144, 166 (2nd Cir. 1999). New jails have opened in Maricopa County since Petitioners filed their renewed Motion to Terminate in 2001, and, if the District Court prolongs this matter much further, more new jails will open and some existing jails will be renovated or closed. Petitioners also have been harmed by continued attorneys' fees for defense, in addition to attorneys' fees for Real Parties in Interest.[3] From a practical point of view, Real Parties in Interest's attorneys have no financial incentive to agree to end this case, given that attorneys' fees are being subsidized by

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[2] The Ninth Circuit's January 25, 2001 Memorandum is set forth at App. 2.

[3] Pursuant to a District Court Order, Petitioners must pay attorneys' fees incurred by attorney Theodore C. Jarvi.

Petitioners, and that they may be able to seek discovery in this case for use in other cases.

As part of Petitioners' Writ of Mandamus, Petitioners alternatively sought a status conference and an order from the District Court outlining a specific plan to terminate this litigation as soon as possible. Petitioners' request was reasonable in light of the fact that the District Court was "to issue a prompt ruling" on Petitioners' Motion to Terminate, which has been pending for almost five years. However, the Ninth Circuit denied Petitioners' Writ of Mandamus. In its Order, the Ninth Circuit reasoned that "[t]he district court held a status conference in the above-referenced case on March 13, 2006." App. 1. However, while this may be true, the District Court did not address any of the relief sought by Petitioners in their Writ of Mandamus at the status conference, and the District Court did not outline a specific plan to terminate this litigation.

III. The Ninth Circuit Erred in Ignoring the Clear Intent of Congress in Denying Petitioners' Writ of Mandamus.

The PLRA's primary focus is to promote administrative redress, filter out groundless and frivolous claims, and foster better prepared litigation of claims aired in court. *Chase v. Peay*, 286 F.Supp.2d 523, 530 (D.Md. 2003), *aff'd*, 98 Fed.Appx. 253 (4th Cir. 2004); *see also*, *Bieregu v. Ashcroft*, 259 F.Supp.2d 342, 345-46 (D.N.J. 2003); *U.S. v. Al-Marri*, 239 F.Supp.2d 366, 367 (S.D.N.Y. 2002), *aff'd*, 360 F.3d 707 (7th Cir. 2004), *cert. denied*, 543 U.S. 809 (2004); *Blissett v. Casey*, 969 F.Supp. 118 (N.D.N.Y. 1997).

Senator Abraham, one of the PLRA's sponsors, explained the purpose of the PLRA as follows:

> We would also provide that any party can seek to have a court decree ended after two years, and that the court will order it ended unless there is still a constitutional violation that needs to be corrected. As a result, no longer will prison administration be turned over to Federal judges for the indefinite future for the slightest reason. No longer will public safety be jeopardized by capricious judicial prison caps. And no longer will the taxpayers be socked for enormous, unnecessary bills to pay for all this.
>
> Instead, the States will be able to run prisons as they see fit unless there is a constitutional violation. If there is, a narrowly tailored order to correct the violation may be entered.
>
> This is a balanced set of proposals, allowing the courts to step in where they are needed, but puts an end to unnecessary judicial intervention and micro management of our prison system we see too often.

142 CONG. REC. S3704 (daily ed. April 19, 1996) (statement of Sen. Abraham).

The constitutionality of the PLRA has been litigated and upheld, and the Court must fully return the administration and operation of the jails to Maricopa County pursuant to the PLRA, as intended by Congress. "[W]here Congress has made its intent clear, 'we must give effect to that intent.'" *Miller v. French*, 530 U.S. 327, 336 (2000) (holding that automatic stay provision of the PLRA does not permit district courts to exercise their equitable authority to suspend operation of stay and does not violate

separation of powers principles), *citing Sinclair Refining Co. v. Atkinson*, 370 U.S. 195, 215 (1962). Terminating this litigation is necessary to comply with the PLRA's purpose of avoiding the entanglement of federal courts in prison litigation beyond that minimum which is necessary to vindicate federal rights. Terminating the instant litigation does not burden a pretrial detainee's fundamental right of access to the courts. The PLRA allows a detainee access to the courts once he or she exhausts his or her administrative remedies. 42 U.S.C. § 1997e(a); *see also*, 18 U.S.C. § 3626(g)(2) ("the term 'civil action with respect to prison conditions' . . . does not include habeas corpus proceedings challenging the fact or duration of confinement in prison."). The PLRA addresses the government's interest in curtailing interference by the federal courts in the administration of prisons, and the Court must now terminate this litigation to fulfill the intent of Congress.

CONCLUSION

With all due respect to the United States Court of Appeals for the Ninth Circuit and the District Court, these courts failed to enforce the clear terms of the PLRA, at a great expense to the parties involved and the taxpayers of Maricopa County, Arizona. After nearly thirty (30) years, this case must end. Petitioners have no other adequate means to terminate this case because the District Court has not yet ruled on their Motion to Terminate, even though it was filed nearly five (5) years ago. For the

reasons set forth above, it is respectfully submitted that this petition for certiorari be granted.

Respectfully submitted,

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

In re: MARICOPA COUNTY SHERIFF'S OFFICE; et al. MARICOPA COUNTY SHERIFF'S OFFICE; et al., Petitioners, v. UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA, Respondent, DAMIAN HART; et al., Real Parties in Interest.	No. 06-70678 D.C. No. CV-77-00479-EHC District of Arizona, Phoenix ORDER (Filed Apr. 19, 2006)

Before: KOZINSKI, RYMER and PAEZ, Circuit Judges.

The district court held a status conference in the above-referenced case on March 13, 2006. Because petitioners have not demonstrated that this case warrants the intervention of this court by means of the extraordinary remedy of mandamus, the petition is denied. *See Bauman v. United States Dist. Court*, 557 F.2d 650 (9th Cir. 1977).

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DAMIAN HART; MICHAEL G. MCKANE; BARTHOLOMEW L. TRUMBLE, Plaintiffs-Appellees, v. JOE ARPAIO,** the duly Elected Sheriff of Maricopa County; HENRY H. HAWS; GEORGE CAMPBELL; BOB CORBIN; HAWLEY ATKINSON; ED PASTOR; Defendants-Appellants.	No. 98-16995 D.C. No. CV-77-00479-EHC MEMORANDUM* (Filed Jan. 25, 2001)

Appeal from the United States District Court
for the District of Arizona
Earl H. Carroll, District Judge Presiding

Submitted Dec. 9, 1999***
Submission Vacated and Deferred December 21, 1999
Resubmitted January 23, 2001
San Francisco, California

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** Joe Arpaio is substituted for his predecessor Tom Agnos pursuant to Federal Rule of Appellate Procedure 43(c)(1).

*** The panel unanimously finds this case suitable for decision without oral argument. Fed. R. App. P. 34(a)(2).

Before: BROWNING, RYMER, and KLEINFELD, Circuit Judges.

Maricopa County and Sheriff Joe Arpaio appeal the district court's order refusing to terminate a consent decree in accordance with the provisions of the Prison Litigation Reform Act (PLRA), 18 U.S.C. § 3526(b). The district court relied on the panel opinion in *Taylor v. United States,* 143 F.3d 1178 (9th Cir. 1998). However, that opinion was subsequently withdrawn. 158 F.3d 1059 (9th Cir. 1998). Since then, three decisions pertinent to the issues raised on appeal have been rendered: *Miller v. French,* 120 S.Ct. 2246 (2000); *Taylor v. United States,* 181 F.3d 1017 (9th Cir. 1999) (en banc); and *Gilmore v. California,* 220 F.3d 987 (9th Cir. 2000). *Gilmore* holds that § 3526(b) is not unconstitutional, and it controls this appeal on that issue.

Although Hart argues that the amended judgment in this case is similar to the judgment in *Taylor,* we disagree. The judgment here imposes extensive obligations on the County, provides for on-going compliance, monitoring and reporting, and establishes enforcement mechanisms including ultimately by the court. For this reason the constitutionality of § 3526(b) is not moot as it was in *Taylor.*

Accordingly, we reverse the district court's order and remand for further proceedings consistent with *Gilmore.*[1]

REVERSED AND REMANDED.

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[1] In light of this disposition, the motions by the United States to intervene and by the County for remand are moot.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

DAMIAN HART, et al., Plaintiffs, vs. SHERIFF JERRY HILL, et al., Defendants.	No. CIV-77-479 PHX-EHC-MS AMENDED JUDGMENT (Filed Jan. 10, 1995)

Pursuant to stipulation of the parties, and good cause appearing therefore, the Court enters the following Amended Judgment. It is the intent of the Court that this Amended Judgment supersede the initial Judgment entered in this action on or about March 27, 1981, and all subsequent amendments, additions and supplemental stipulations relating thereto, including, without limitation, the Judgment (pursuant to Supplemental Stipulation Regarding Medical, Recreational Equipment, Razor Blades, Noise Control and Dayroom Access) entered on November 12, 1982 and the Stipulation Regarding Modification of Final Judgment which was granted preliminary approval on December 27, 1984. It is further the intent of the Court that, upon entry of this Amended Judgment, the obligation of defendants to provide periodic reports to the United Slates District Court for the District of Arizona regarding the operation of the Maricopa County jail system (hereinafter "the jails" or "the jail system") shall terminate; provided, however, that nothing in this Amended Judgment shall be construed so as to reduce or eliminate reporting requirements set forth herein or to deny plaintiffs access to the Court, by appropriate post-judgment

petition filed by plaintiffs subject to the dispute resolution provision in paragraph 116, in the event of a material violation by one or more of the defendants of any term or provision of this Amended Judgment.

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED, as follows:

1. This Amended Judgment is entered pursuant to a stipulation of the parties. No other agreement among the parties exists as of the date of this Amended Judgment with respect to the subject matter hereof. No party to this Amended Judgment shall assert or rely upon the terms of any prior agreement or judgment in any subsequent proceedings involving the parties to, and subject matter of, this Amended Judgment.

2. The provisions, conditions and procedures contained herein have been negotiated by the parties and do not represent a judicial determination of any constitutionally mandated standards applicable to the jails.

3. Upon entry of this Amended Judgment, the Court's monitoring of conditions within the jails and the periodic reporting responsibilities of the defendants to the Court shall terminate. The Court shall retain jurisdiction of the parties and of this action solely for the purpose of enforcing compliance with the terms and conditions of this Amended Judgment.

4. This Amended Judgment shall apply only to pretrial detainees held in the jails, and shall apply both to the existing jail facilities and to future jail facilities, unless expressly noted to the contrary herein. All pretrial detainees shall be entitled to the rights and privileges

granted in this Amended Judgment whether they are segregated or housed with sentenced inmates.

5. This Judgment applies to all defendants and their successors in office.

6. All provisions of this Amended Judgment shall be immediately implemented, except those provisions, if any, with specific later implementation dates, which provisions shall be implemented on or before the specified implementation date.

7. Except as otherwise expressly provided herein, the Sheriff and the Maricopa County Board of Supervisors reserve all of their respective rights, privileges, discretion and prerogatives conferred on them by law with regard to the operation, maintenance, management and/or administration of the jails.

8. The parties acknowledge that, under current caselaw, it is unconstitutional to incarcerate pretrial detainees for the purpose of punishment.

Population/Housing Limitations

9. Through the operation, management and funding of the jails, defendants shall endeavor to achieve, in good faith and as expeditiously as possible, and to maintain the following population limitation and inmate housing goals:

A. For any cell at the First Avenue Jail facility (previously referred to as "Central Jail") used to house a pretrial detainee, there shall be no more than three inmates in any eight-person cell; no more than two inmates in any four-person cell; and no more than one inmate in any one or two person cell. For the purpose of determining the

capacity of an individual cell, the parties agree to abide by the cell size designations reflected in the floor plans for the First Avenue Jail facility attached as Exhibit "A".

B. No pretrial detainee housed in the Towers, Madison, Durango, Avondale (Southwest), Estrella, and Mesa (Southeast) jail facilities shall be housed in a cell containing more than one other inmate.

C. The total number of inmates housed in any dormitory in the Estrella jail used to house pretrial detainees shall not exceed 100.

D. Pretrial detainees shall be incarcerated in jail cells or dormitories and shall not be housed in a dayroom or any other temporary housing facility of any kind.

E. Pro per inmates representing themselves on criminal charges, who have demonstrated a legitimate need to collect and maintain voluminous legal documents, will be housed alone, provided sufficient cell space is available.

F. Double bunking of pretrial detainees may only occur in cells (i) with two permanent bunks and (ii) with access to a dayroom in which no inmate beds are located.

G. The defendants agree that the maximum population goal, not including any tent or other temporary housing facility, within any facility being used to house pretrial detainees shall be as follows:

FACILITY	MAXIMUM POPULATION GOAL
First Avenue	417
Madison	1905
Durango	872

Avondale	56
Towers	720
Estrella	880
Southeast	60

The parties recognize that developing alternatives to incarceration of pretrial detainees is an element of reducing jail population, and that the reduction of the population of pretrial detainees in the jail system, where there is no threat to public safety, is a goal of this Amended Judgment.

10. The defendants agree to make good faith efforts, within their respective powers, to achieve the pretrial detainee housing goals set forth above. When a pretrial detainee is presented to the Sheriff by a competent authority for confinement in the jails and the jail population levels, the requirements of the inmate classification system, and/or the maintenance of internal order or security within the jail system prohibit the Sheriff from housing that pretrial detainee in accordance with the population goals in this Amended Judgment, the Sheriff shall promptly notify in writing the Maricopa County Board of Supervisors or its designee (which shall be the Justice and Law enforcement Agency of the Maricopa County Manager's Office pending further written notice) and the authorized representative of the plaintiff-class, if any, of that population/housing situation. The Sheriff will also report to the Board or its designee whenever the total system wide inmate population, not including tents or other temporary housing facilities, exceeds 95% of the system wide jail capacity. The Board or its designee shall meet on an emergency basis to evaluate the situation and recommend corrective action.

11. Even when in compliance with the population limitation and inmate housing goals set forth in this Amended Judgment, defendants shall endeavor to house, in any cell, the lowest number of pretrial detainees possible in light of all relevant circumstances, including the requirements of the inmate classification system and the internal order and security of the jail system.

12. As of the date of this Amended Judgment, the Maricopa County Board of Supervisors has implemented a multi-element inmate population reduction program (the "Board's program"). The primary purpose of this program is to meet the population goals set out in this Amended Judgment. A summary of the Board's program and a description of its objectives, which may be amended and supplemented from time to time, is attached to this Amended Judgment as Exhibit "B." Within their statutory responsibilities, each of the defendants shall participate in and commit themselves to the success of this program.

13. In conjunction with the adoption and implementation of the Board's program, the Board has established, under the auspices of the Justice and Law Enforcement Agency of the County Manager's Office, a jail population management group ("JPMG") to monitor the progress of the Board's program in achieving its goals and to otherwise identify and address issues relating to the size of the inmate population incarcerated in the jails.

14. Counsel for plaintiffs (or his designee or successor, or the designee of his successor) shall have permanent observer status on the JPMG, and shall be entitled to receive notices of all meetings; to receive reasonable advance notice of any proposed material change in the

Board's program; and to personally attend and participate at all meetings of the JPMG.

15. For so long as the JPMG or any equivalent organization is in existence, the Justice and Law Enforcement Agency of the Maricopa County Manager's Office shall prepare, on not less than an annual basis, a detailed report to the JPMG (the "Annual Report"), including among other matters:

A. county jail population data for the preceding twelve (12) months;

B. a comparison of population statistics for the preceding twelve (12) months with data for each of the previous three (3) years;

C. a summary of all implemented, abandoned, completed and planned Board program elements; and

D. a documented summary (including empirical analysis when practicable and meaningful) of the success or lack of success of each Board program element during the preceding twelve (12) months.

E. a detailed inventory of the then current capacity of each of the housing units of the jails.

A copy of the Annual Report shall be delivered to counsel for the plaintiff-class, if any.

Dayroom Access

16. Pretrial detainees at the First Avenue Jail facility shall have access to a dayroom during the hours of 8:00 a.m. to 10:30 p.m., exclusive of counts, clean-up of the dayroom and times during which the inmates are in

transit, subject to the transit requirements of paragraph 17.

17. Pretrial detainees at the First Avenue Jail facility shall be provided dayroom/cell transit at least three times during waking hours, in addition to meal ingress and egress.

18. Pretrial detainees, at jail facilities other than First Avenue, including those opened subsequent to the effective date of this Amended Judgment which utilize a dayroom arrangement, shall be provided complete freedom of access between cell and dayroom during waking hours, at least sixteen hours each day. For those facilities not utilizing a dayroom arrangement, pretrial detainees shall be provided equivalent access to resources and free space as in dayrooms. Before pretrial detainees are placed in any facility plan without a dayroom arrangement, the defendants shall provide counsel for the plaintiff class, if any, a detailed summary of the proposed housing arrangement including the availability of resources and free space.

19. Pretrial detainees at all jail facilities shall have access to a television, tables and benches sufficient for the number of persons who will be utilizing each dayroom. Defendants shall also provide small games such as checkers, chess, etc. in each dayroom.

20. Pretrial detainees confined in special management in any jail facility may be denied access to a dayroom if they pose a special security risk necessitating segregation from the general population.

Natural Light and Windows;
Artificial Lighting; Temperature

21. Defendants shall provide pretrial detainees with lighting at least sufficient to prevent eye fatigue and eye strain, in all housing and activity areas.

22. Defendants shall assure that lights are dimmed sufficiently during sleeping hours to allow pretrial detainees to sleep without interference.

23. Defendants shall provide pretrial detainees with heating and cooling systems and all equipment and structures necessary to provide healthful and comfortable living conditions.

Noise

24. Defendants shall provide pretrial detainees with living areas with acoustics that ensure noise levels that do not interfere with normal human activities.

Access to Reading Materials

25. A pretrial detainee shall be permitted to possess three books, five magazines, and one daily newspaper in his/her cell excepting materials, the primary subject matter of which is the manufacture and use of weapons, explosives, escape or disturbance techniques, and/or which are obscene as defined by the United States Supreme Court. If the material is available to the public at a newsstand or public library, then absent some special circumstance wherein censorship is necessary in order to maintain institutional security or preserve internal order and discipline, such materials shall not be censored.

26. Each pretrial detainee shall have available a wide variety of books from which to choose, and shall have available access to a general library through a book cart delivery system.

27. Defendants shall make available a reasonable variety of books and magazines written in the Spanish language for those pretrial detainees who converse in that language.

28. Defendants shall assure that books available to pretrial detainees for purchase and through the library, include a reasonable number of books at an adult reading level, of interest to adults.

Access to Religious Services

29. Pretrial detainees shall be provided the opportunity to participate in at least one (1) weekly religious service. Upon request, reasonable efforts will be made by the jail administration to accommodate a pretrial detainee's particular faith.

30. Defendants shall provide adequate space, opportunity and assistance to pretrial detainees who wish to attend religious services at the jail.

31. Defendants shall provide pretrial detainees with the opportunity to meet with the clergy. Such meetings will be provided on the same basis as attorney visits provided the clergy has obtained all necessary access clearance from the Sheriffs Office. Such access clearance will not be withheld without good cause which shall be communicated in writing to the applicant.

Mail

32. Privileged outgoing mail, that is, mail to public officials, attorneys, the Courts, and the press, shall not be opened or otherwise interfered with; such mail may be opened and inspected in the presence of the pretrial detainee upon good cause shown by clear and convincing evidence of a security breach. Such mail shall not be read, subject to the requirements of the Fourth Amendment. If such requirements are satisfied by the acquisition of a warrant based upon probable cause, then the privileged outgoing mail in question may be searched and seized.

33. Privileged incoming mail, that is, mail from public officials, attorneys, the Courts, and the press, may be opened or inspected in the presence of the pretrial detainee to whom the material is addressed; such inspection is limited to locating contraband. Detention personnel may not read or censor the enclosed letter except upon compliance with the requirements of the Fourth Amendment as described above in the preceding paragraph. If such requirements are met, then the incoming mail in question may be searched and seized. A record shall be maintained of all mail so read, indicating the pretrial detainee to whom addressed, the date read, and the officer conducting the inspection, with a copy of the warrant attached thereto.

34. Non-privileged mail, whether incoming or outgoing, may be opened and inspected out of the pretrial detainee's presence, but not read by detention personnel except for good cause. The record requirement as described in the preceding paragraph shall also apply to mail read pursuant to this paragraph, with the exception that no

warrant need be attached. Furthermore, if this non-privileged mail is to be censored, prior appropriate notice and opportunity to be heard on the matter shall be given the author, and the decision regarding this matter shall be made by a disinterested party, one not involved in the initial determination.

35. Writing materials, including envelopes, paper, pencils, and five stamps per week shall be provided to any pretrial detainee who has insufficient funds in his inmate fund account to purchase the same in reasonable quantities.

36. Defendants shall allow pretrial detainees to purchase a daily newspaper through a subscription with the local newspaper and/or by mail. Further, defendants shall permit pretrial detainees to receive soft-covered books, magazines and newspapers through the mail from publishers, provided that defendants shall be entitled to inspect such materials for contraband.

37. Defendants shall be permitted to terminate newspaper privileges, books, or magazines to any pretrial detainee who misuses a newspaper, book, or magazine by causing a fire, security problem, or toilet stoppage in the jails. Written records shall be maintained of any loss of privileges as heretofore set forth.

Telephone Privileges

38. Pretrial detainees housed in facilities existing at the time of this Amended Judgment shall be permitted access to a telephone for at least ten minutes a day, excluding delays caused by equipment malfunctions or deficiencies. In any week, the access periods allowed to

each pretrial detainee shall include daytime and evening hours. This access may be provided through charge-a-call telephones.

39. Defendants shall ensure calls by pretrial detainees as needed to legal counsel. If such legal counsel's office refuses collect calls, then pretrial detainees shall be afforded the use of a free telephone. When not using the charge-a-call telephone, a log of legal calls will be maintained, and the Sheriffs Office shall undertake such other steps as are reasonably necessary in an effort to ensure fair distribution of telephone access to all pretrial detainees.

Clothes and Towels

40. Defendants shall provide pretrial detainees with at least two changes of underwear per week, one change of outer garments and bedding per week, three towel changes per week, and one blanket change per month.

41. Defendants shall assure that pretrial detainees are not forced to wear dirty clothes to court.

42. Defendants shall provide each and every pretrial detainee with bedding sufficient to provide reasonable sleeping, comfort.

Sanitation, Safety, Hygiene and Toilet Facilities

43. Defendants shall provide a fire protection service sufficient to assure the safety of staff, pretrial detainees and visitors at the jails and a system of fire inspection and testing of equipment by local fire officials at least every three months. Defendants shall assure that all jails

comply with the current fire safety code promulgated by the National Fire Protection Association.

44. Defendants shall assure that all jail facilities are inspected monthly by the Maricopa County Department of Health Services, Bureau of Environmental Health, in accordance with the policies and procedures established by that agency.

45. Defendants shall provide for the prompt removal of pretrial detainees from cells with inoperable toilets and sinks to a place where such facilities are available.

46. Defendants shall provide pretrial detainees with sufficient, safe cleaning supplies to enable pretrial detainees to properly clean their cells. Defendants shall assure that cells, including but not limited to medical isolation cells, are properly cleaned and sanitized prior to occupancy by pretrial detainees.

47. Defendants shall maintain a written plan for daily housekeeping and regular maintenance of the jail. Defendants shall provide toilets, showers, and sinks to pretrial detainees that are in good repair and can be cleaned properly.

48. Defendants shall provide for the sanitary storage and daily removal of garbage in the jail facilities.

49. Dividing walls will be constructed to provide privacy during use of toilet facilities in each multiple occupancy cell and dayroom.

50. Defendants shall provide each pretrial detainee with a clean razor and will provide replacement blades as needed.

Access to Law Library

51. A pretrial detainee representing himself or herself on criminal charges or in a pending or prospective habeas corpus or civil rights action shall be entitled to meaningful access to legal materials as necessary to perform the particular research involved. If legal research materials are not contained in the law library and are required for the foregoing purpose, the law clerks will obtain copies thereof and provide them to the pretrial detainee in a timely manner.

52. Defendants shall ensure that no pretrial detainee seeking judicial relief shall be subject to reprisals or penalties because of a decision to seek such relief.

53. Defendants shall provide pretrial detainees with facilities and staff necessary to ensure confidential contact with attorneys and their authorized representatives.

54. Defendants shall provide detainees access to the assistance of a law clerk with necessary legal experience (paralegal, legal or law clerk) to assist detainees with legal problems available five days per week within twenty-four hours of request.

55. Legal wr ng materials, including envelopes, papers, pencils, and postage. shall be provided to any pretrial detainee who has insufficient funds in his inmate fund account to purchase the same in reasonable quantities.

Medical, Dental And Psychiatric Care

56. Defendants shall provide a receiving screening of each pretrial detainee, prior to placement of any pretrial detainee in the general population. The screening will be

sufficient to identify and begin necessary segregation, and treatment of those with mental or physical illness and injury; to provide necessary medication without interruption; to recognize, segregate, and treat those with communicable diseases; to provide medically necessary special diets; and to recognize and provide necessary services to the physically handicapped.

57. All pretrial detainees confined in the jails shall have access to medical services and facilities which conform to the standards designated as "essential" by the National Commission on Correctional Health Care ("NCCHC") *Standards for Health Services in Jails*, as amended from time to time. When necessary, pretrial detainees confined in jail facilities which lack such services shall be transferred to another jail or other location where such services or health care facilities can be provided or shall otherwise be provided with appropriate alternative on-site medical services.

58. Defendants shall assure that all policies, procedures, and programs instituted pursuant to the preceding paragraph are fully implemented and that each pretrial detainee is provided health services in conformity with such policies, procedures, and programs.

59. A copy of all then-current Correctional Health Services policies, procedures and programs shall be made available to plaintiffs' counsel for inspection and/or copying upon reasonable request.

60. Defendants shall ensure that orders by the responsible health care authority and its qualified health care personnel are not interfered with or overridden by security staff.

61. Defendants shall ensure that the pretrial detainees' prescription medications are provided without interruption where medically prescribed by correctional medical staff.

62. Defendants shall maintain unit dose records of all psychiatric and narcotic prescription medications administered to pretrial detainees. All other prescription medications shall be recorded in the pretrial detainees' medical records indicating the type and amount of medication dispensed and the date.

63. Defendants shall provide written notice to each and every pretrial detainee upon admission to the jail of the procedures necessary to obtain medical attention, in the Spanish and English language.

64. Defendants shall provide a monitoring system by which pretrial detainees may be assured that sick call requests are delivered to the responsible health care authority and its qualified health care personnel in a timely manner by security staff and that written responses from health care personnel to pretrial detainees are also handled in a timely manner.

65. Defendants shall provide delousing procedures at the jails, which procedures, when utilized, shall be safe and effective.

66. Defendants shall provide emergency transportation service to an appropriate hospital or medical facility, without unreasonable delay, when needed.

67. Defendants shall provide sufficient equipment to provide emergency medical treatment to the pretrial detainees at the jails when needed.

68. When deemed necessary by the correctional medical staff, defendants shall provide facilities for pretrial detainees who are suffering from severe withdrawal symptoms due to drug and alcohol addiction separate from the general detainee population.

69. Defendants shall provide pretrial detainees with dental care in cases of emergency.

70. Defendants shall arrange for and obtain written evaluations of health care services within the jails by independent persons, organizations or agencies experienced in evaluating such services, which evaluations shall utilize generally accepted standards for correctional facilities as described by the NCCHC. Reports shall be obtained based upon the regular review schedule (currently one every three years) of the NCCHC or other independent reviewing agency; provided, however, that an annual, interim internally-prepared report shall be provided to the attorney for the plaintiff class, if any, at the same time that such report is provided to the independent review organization.

Intake Areas

71. Defendants shall continuously monitor conditions, including the population of pretrial detainees, in the designated intake areas. Defendants shall formulate, adopt and implement programs designed to reduce overcrowding and improve conditions for pretrial detainees in the intake areas and to reduce the time of incarceration in the intake areas.

72. With respect to the intake areas, defendants shall adopt the following goals:

A. No pretrial detainee shall be incarcerated in an intake area for more than forty-eight (48) hours;

B. Pretrial detainees in the intake areas shall have access to toilet and wash basin facilities;

C. Pretrial detainees incarcerated in an intake area for twenty-four (24) continuous hours shall be provided with a blanket and a bed or mattress on which to sleep.

D. Defendants shall ensure that a report reflecting the length of stay of pretrial detainees in the intake area is generated by the Sheriff and made available to counsel for the plaintiff class, if any, upon implementation of the Sheriff's LEJIS 2.0 computer system, or by January 1, 1995, which ever occurs first.

Mechanical Restraints and Segregation

73. It shall be normal procedure to use mechanical restraints when transporting a pretrial detainee from place to place outside the facility. Mechanical restraints may be otherwise used only when reasonably necessary in the following instances:

A. When transporting a pretrial detainee from place to place inside the facility, between facilities, or to and/or from court.

B. When the past history and present behavior or apparent emotional state of the pretrial detainee creates a likelihood that bodily injury to any person or escape by the pretrial detainee will occur.

C. When licensed medical personnel so advise, to prevent the pretrial detainee from attempting

suicide or inflicting serious physical injury upon himself/herself or others.

74. When mechanical restraints are deemed necessary, the shift supervisor may order their use in accordance with conditions a, b, and c in the preceding Paragraph. In cases arising under conditions b and c, the shift supervisor shall report the reasons for use of restraints in writing. This report shall be submitted to the facility administrator or the highest ranking officer available who shall review it within twenty-four hours after restraints are first used. Medical personnel shall regularly check those placed in restraints under conditions b and c.

75. Defendants shall ensure that no pretrial detainee placed in physical restraints shall be left without adequate supervision and shall be released for bathroom privileges as necessary.

76. Except as provided for in paragraph 73, Defendants shall not physically restrain a pretrial detainee except during extreme emergencies, and then only with soft leather restraints with the exception that pretrial detainees may be restrained with steel handcuffs and/or leg irons for the time it takes to locate soft leather restraints and substitute them.

77. Defendants shall provide special management pretrial detainees with living conditions and privileges equal to those available to the general detainee population with exceptions justified only by clear and substantial evidence, in writing.

78. Defendants shall provide all pretrial detainees in special management a toilet and sink in their cell.

79. Defendants shall provide that the status of pretrial detainees in special management is reviewed by a classification officer or other authorized body at least every seven days the first two months and at least every thirty days thereafter.

80. Defendants shall provide that admission to the administrative segregation unit for purposes of protective custody is made only where there is substantial evidence that protective custody is warranted, or unless the pretrial detainee provides written consent to such confinement.

81. Defendants shall provide that where a pretrial detainee consents to administrative segregation, the pretrial detainee may at any lime request assignment to the general detainee population, and such request shall be granted, unless there is substantial evidence to show that protective custody in the unit is absolutely necessary.

82. Defendants shall provide that wherever a pretrial detainee in special management is deprived of any usually authorized item or activity, a report of the action is made and forwarded to the facility administrator.

83. Defendants shall provide that all pretrial detainees in special management are provided basic personal items for use in their cells, unless there is imminent danger that a pretrial detainee will destroy any item or inflict self-injury or injury to others.

Recreation Time Outside

84. Except for pretrial detainees in special management and those who do not desire outdoor recreation,

pretrial detainees shall be allowed one hour per day six days per week in the outdoor exercise areas with reasonable space for physical activities and a reasonable variety of recreation and exercise equipment for use by the pretrial detainees, such as basketball, volleyball, table tennis, other equipment, so that inmates may engage in physical activities during their outdoor recreation period. At the First Avenue jail, the one hour shall not include transit time.

85. Pretrial detainees in special management shall be entitled to the same outdoor exercise rights as in paragraph 84, above, provided, however, that pretrial detainees reasonably classified as a special security risk shall be provided exercise as practicable.

86. Pretrial detainees in holding areas for less than seventy-two hours and pretrial detainees whose medical condition will not permit, need not be provided exercise. This paragraph shall not be interpreted as to deny handicapped pretrial detainees the same outdoor exercise rights is in paragraph 84 above.

Inmate Classification

87. Defendants shall provide a sufficient number of classification counselor personnel, sufficiently educated and trained in the behavioral and/or social sciences and ensure that each incoming pretrial detainee, not released R.O.R. or on bail, shall be promptly interviewed, counseled, and oriented to jail rules and regulations and promptly classified, managed and housed according to mental and physical limitations, aggressiveness, youth, sexual preference, substances abuse, severity of the

alleged crime, susceptibility to assault, and recent escape history. Defendants shall further provide twenty-four hour visual monitoring by a detention officer from time of arrival until classification procedures are completed.

88. Male inmates shall not be housed with female inmates. Adult pretrial detainees shall not be housed with juveniles. In addition, classification decisions shall be based upon but not limited to the following factors: (a) offense; (b) criminal history; (c) personal and social history; (d) observed behavior; (e) institutional behavior; (f) recent escape history; (g) substance abuse; (h) suicidal tendencies.

89. Different types of pretrial detainees shall be separated with the objectives of ensuring their safety, the safety of other pretrial detainees, the security of the facility and protection of the public. Every good faith effort shall be undertaken to identify mentally unstable and violent inmates. These inmates shall be separated from the general population and each other whenever such action is necessary to achieve the objectives set forth in this paragraph.

90. In classifying pretrial detainees, defendants will not unlawfully discriminate on the basis of race, color, national origin, age, sex or physical or mental handicap. Review of classification decisions shall be conducted on a timely basis and adjustments made as necessary in each individual case.

Visitation

91. Pretrial detainees shall be permitted three one-half hour visits per week, excluding transit time. Visiting hours shall include afternoons, evenings and weekends.

92. The Sheriff shall develop policies and procedures governing visitation, including ensured visitation by minors. Such policies and procedures shall provide for special visits, specify hours of visitation and reasonable restrictions on who may visit.

93. Pretrial detainees may have two visitors at any one time counting as one visit.

94. Contact visitation shall be provided to pretrial detainees who are classified as medium or lesser security risks, where such visitation can be accomplished without creating security risks. Contact visitation shall not be unreasonably withheld.

Food

95. Defendants shall provide food to pretrial detainees that meets or exceeds the dietary allowances as stated in the Department of Agriculture's Guide to Daily Food Choices.

96. Defendants shall ensure that all food services personnel including inmates assigned to food service work comply with applicable state and local laws and regulations.

97. Defendants shall ensure that all inmates assigned to food service work are carefully screened and in good health and free from communicable disease and open infected wounds.

98. Defendants shall provide reasonable, nutritional substitutions for pretrial detainees who are prohibited from eating certain foods due to established religious beliefs that demand they adhere to dietary practices or because they are vegetarians.

99. Defendants shall ensure that all inmates assigned to food service work are issued clean clothes and are given physical examinations on a reasonable schedule prior to and during food service work.

100. Meals for the restricted population shall be served in their respective cells, if necessary, due to special security risks. All other pretrial detainees shall be fed in dining areas separate from their cells.

101. Pretrial detainees who do not wish to eat shall not be required to lock out of their cells to dining areas.

Staff Members, Training and Screening

102. Defendants shall assure that each pretrial detainee is visually observed by detention officers in a manner and frequency that complies with the guidelines contained in the Manual of Standards for Adult Local Detention Facilities, Commission on Accreditation. American Correction Association, December 1977.

103. Defendants shall assure that detention officers are in a position to respond promptly to calls for help by pretrial detainees.

104. Defendants shall assure that written reports are recorded and statistics are compiled, of all instances of inmate or officer abuse, injuries, violence, assaults, sexual assaults, suicides, deaths and inmate riots and

demonstrations, in a manner conducive to informed access by the Court.

105. Defendants shall provide compulsory screening of all detention officers, by a psychiatrist or psychologist, to determine mental and emotional suitability for custodial work, at least equivalent in scope to psychological screening given to Maricopa County Deputy Sheriff applicants.

106. Defendants shall ensure that all new detention officers receive a basic training course consisting of not less than forty hours prior to being assigned to any detention-related duty.

107. Defendants shall ensure that ongoing training be provided continuously during employment of all detention officers to sharpen their skills, reinforce their knowledge and understanding of the fundamentals of their jobs, and familiarize them with new developments in the field and new policies and procedures of the institution, in a reasonable manner. Said training shall include, but not be limited to the following: (a) security procedures; (b) supervision of inmates; (c) report writing; (d) significant legal issues; (e) inmate rules and regulations; (f) grievance and disciplinary procedures; (g) rights and responsibilities of inmates; (h) fire and emergency procedures; (i) first aid; (j) human relations and communications skills; (k) crisis intervention; (l) special needs of minorities, females and handicapped inmates; (m) recognition of the signs and symptoms of mental illness and mental retardation; (n) recognition of the signs and symptoms of chemical dependency; and (o) problem-solving and guidance. The basic forty hour training shall include the foregoing listed subjects.

Facilities for the Handicapped

108. Defendants shall house handicapped pretrial detainees in a manner which reasonably provides for their safety and security and housing units shall be reasonably accessible to and usable by them. Cells shall include assist bars in toilet areas and shower areas and ramps

Disciplinary Policy and Procedures

109. In exercise of his or her right to discipline inmates, the Sheriff shall maintain a system of prohibitions, penalties and corrective measures that deal with conduct which causes or threatens to cause harm to self or others or otherwise violates institutional rules.

110. These disciplinary procedures shall be designed to achieve the following objectives:

A. To ensure that disciplinary action is taken only at such times and to such a degree as is necessary to regulate all inmate behavior within acceptable limits.

B. To control inmate behavior in an impartial and consistent manner.

C. To ensure that disciplinary action is not capricious or retaliatory.

D. To define and grade offenses in order to limit official discretion in punishment and to give fair warning to the inmate of prohibited conduct and the consequences of engaging in it.

E. To prescribe penalties which are proportionate to the seriousness of the offense, including restitution, where appropriate.

F. To safeguard conduct that is without guilt from condemnation.

111. Procedural due process, when required by law for disciplinary proceedings, shall include the following elements:

A. Written notice of the charges shall be given to an inmate at least twenty-four hours prior to a hearing thereon. The notice of charges shall include the date and time of the hearing.

B. Disciplinary hearings shall be conducted within twenty-four to seventy-two hours, excluding weekends or holidays, from the time the inmate receives written notice of the charges.

C. The hearing shall be conducted by an impartial individual or board.

D. Inmates shall be allowed to call witnesses and present documentary evidence in their defense if permitting them to do so will not jeopardize institutional safety or correctional goals.

E. In actions where the inmate is illiterate or non-English speaking, or unusually complex issues exist, a staff member shall be assigned to assist the inmate.

F. The findings of the board shall be in writing, stating the basis for its decision and the sanctions imposed.

G. A review process for appeals.

H. The disciplinary procedures shall be reviewed annually and updated by the Custody Bureau Commander and his staff to ensure that they remain appropriate and continue to contribute to the effective operation of the jails.

Inmate Grievance Policy and Procedures

112. The Sheriff shall maintain an inmate grievance procedure to provide a prompt administrative response to the complaints of pretrial detainees. Such procedures shall include the following elements:

A. A method whereby all inmates may promptly communicate concerns to the administration.

B. A prompt investigation of complaints.

C. A written response to complaints within specific reasonable time periods.

D. A review by an impartial individual or board.

E. Grievance procedures shall be reviewed annually by the Sheriff and updated to ensure that they remain appropriate and continue to contribute to the effective operation of the jails.

Reports and Record Keeping

113. Any time defendants invoke the security override provision of this Amended Judgment or any emergency exception to any requirement or limitation set forth in this Amended Judgment, defendants shall promptly provide written notice to counsel for the plaintiff-class, if any, identifying the nature and scope of the deviation and establishing, an end date for the deviation. If the end date is not met, another notice must be provided with the similar information and a new end date.

114. Defendants agree to provide counsel for the plaintiff-class, if any, the following information on a quarterly basis: (1) jail population statistics for each facility for the preceding period; (2) health inspection

reports for the preceding period; (3) Custody Bureau statistics reflecting incidents reported during the preceding period; (4) copies of the Inmate Services Division's monthly reports; (5) any summary notice of satisfaction of Department of Agriculture nutritional requirements; (6) all security overrides issued during the preceding period; and (7) reports of the fire inspectors. The defendants also agree to make good faith efforts to respond to reasonable requests for additional information from counsel for the plaintiff-class.

Security Override

115. When required by unusual circumstances affecting institutional order or security, the rights and privileges of pretrial detainees under this Amended Judgment regarding dayroom access, lighting, access to reading materials, access to religious services, mail, telephone privileges, clothes and towels, sanitation and safety, access to the law library, medical care, mechanical restraints, recreation time outside, classification, visitation and the limitations upon inmate housing and population set forth herein may be suspended, restricted, denied or withheld for such time as the unusual circumstances continue to exist. However, the provisions of this paragraph shall not preclude any pretrial detainee from challenging the validity of any such restrictions, suspension or deprivation in an appropriate grievance, disciplinary, or legal proceeding.

Dispute Resolution

116. In the event of a dispute regarding the scope or meaning of any provision of this Amended Judgment, or

the compliance of any party with any provision of this Amended Judgment, the parties shall meet and confer in an effort to resolve such dispute. In the absence of agreement on the subject, the parties shall submit their differences to non-binding mediation before a person selected by the chief judge of the federal district court in the State of Arizona. No application for order to show cause or other request for an Order of the District Court relating to enforcement of this Amended Judgment may be filed unless it is accompanied by a certificate from the selected mediator certifying that, after personal consultation and good faith efforts, the parties have been unable to resolve the dispute. Said certificate shall be accompanied by a report of the mediator summarizing the dispute, and setting out the mediator's recommended resolution, if any.

DATED this 9th day of January, 1995

/s/ Earl H. Carroll
United States District Court Judge

[Exhibits Omitted In Printing]

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

In re: MARICOPA COUNTY SHERIFF'S OFFICE; et al. MARICOPA COUNTY SHERIFF'S OFFICE; et al., Petitioners, v. UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA, Respondent, DAMIAN HART; et al., Real Parties in Interest.	No. 06-70678 D.C. No. CV-77-00479-EHC District of Arizona, Phoenix ORDER (Filed May 19, 2006)

Before: KOZINSKI, RYMER and PAEZ, Circuit Judges.

The motion for reconsideration is denied. *See* 9th Cir. R. 27-10.

No further filings shall be accepted in this closed case.

18 U.S.C. § 3626

(a) Requirements for relief. –

(1) Prospective relief. – (A) Prospective relief in any civil action with respect to prison conditions shall extend no further than necessary to correct the violation of the Federal right of a particular plaintiff or plaintiffs. The court shall not grant or approve any prospective relief unless the court finds that such relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right. The court shall give substantial weight to any adverse impact on public safety or the operation of a criminal justice system caused by the relief.

(B) The court shall not order any prospective relief that requires or permits a government official to exceed his or her authority under State or local law or otherwise violates State or local law, unless –

(i) Federal law requires such relief to be ordered in violation of State or local law;

(ii) the relief is necessary to correct the violation of a Federal right; and

(iii) no other relief will correct the violation of the Federal right.

(C) Nothing in this section shall be construed to authorize the courts, in exercising their remedial powers, to order the construction of prisons or the raising of taxes, or to repeal or detract from otherwise applicable limitations on the remedial powers of the courts.

(2) Preliminary injunctive relief. – In any civil action with respect to prison conditions, to the extent otherwise authorized by law, the court may enter a

temporary restraining order or an order for preliminary injunctive relief. Preliminary injunctive relief must be narrowly drawn, extend no further than necessary to correct the harm the court finds requires preliminary relief, and be the least intrusive means necessary to correct that harm. The court shall give substantial weight to any adverse impact on public safety or the operation of a criminal justice system caused by the preliminary relief and shall respect the principles of comity set out in paragraph (1)(B) in tailoring any preliminary relief. Preliminary injunctive relief shall automatically expire on the date that is 90 days after its entry, unless the court makes the findings required under subsection (a)(1) for the entry of prospective relief and makes the order final before the expiration of the 90-day period.

(3) Prisoner release order. – (A) In any civil action with respect to prison conditions, no court shall enter a prisoner release order unless –

> **(i)** a court has previously entered an order for less intrusive relief that has failed to remedy the deprivation of the Federal right sought to be remedied through the prisoner release order; and
>
> **(ii)** the defendant has had a reasonable amount of time to comply with the previous court orders.

(B) In any civil action in Federal court with respect to prison conditions, a prisoner release order shall be entered only by a three-judge court in accordance with section 2284 of title 28, if the requirements of subparagraph (E) have been met.

(C) A party seeking a prisoner release order in Federal court shall file with any request for such relief, a request for a three-judge court and materials sufficient to demonstrate that the requirements of subparagraph (A) have been met.

(D) If the requirements under subparagraph (A) have been met, a Federal judge before whom a civil action with respect to prison conditions is pending who believes that a prison release order should be considered may sua sponte request the convening of a three-judge court to determine whether a prisoner release order should be entered.

(E) The three-judge court shall enter a prisoner release order only if the court finds by clear and convincing evidence that –

(i) crowding is the primary cause of the violation of a Federal right; and

(ii) no other relief will remedy the violation of the Federal right.

(F) Any State or local official including a legislator or unit of government whose jurisdiction or function includes the appropriation of funds for the construction, operation, or maintenance of prison facilities, or the prosecution or custody of persons who may be released from, or not admitted to, a prison as a result of a prisoner release order shall have standing to oppose the imposition or continuation in effect of such relief and to seek termination of such relief, and shall have the right to intervene in any proceeding relating to such relief.

(b) Termination of relief. –

(1) Termination of prospective relief. – (A) In any civil action with respect to prison conditions in which prospective relief is ordered, such relief shall be terminable upon the motion of any party or intervener –

(i) 2 years after the date the court granted or approved the prospective relief;

(ii) 1 year after the date the court has entered an order denying termination of prospective relief under this paragraph; or

(iii) in the case of an order issued on or before the date of enactment of the Prison Litigation Reform Act, 2 years after such date of enactment.

(B) Nothing in this section shall prevent the parties from agreeing to terminate or modify relief before the relief is terminated under subparagraph (A).

(2) **Immediate termination of prospective relief.** – In any civil action with respect to prison conditions, a defendant or intervener shall be entitled to the immediate termination of any prospective relief if the relief was approved or granted in the absence of a finding by the court that the relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right.

(3) **Limitation.** – Prospective relief shall not terminate if the court makes written findings based on the record that prospective relief remains necessary to correct a current and ongoing violation of the Federal right, extends no further than necessary to correct the violation of the Federal right, and that the prospective relief is narrowly drawn and the least intrusive means to correct the violation.

(4) **Termination or modification of relief.** – Nothing in this section shall prevent any party or intervener from seeking modification or termination before the relief is terminable under paragraph (1) or (2), to the extent that modification or termination would otherwise be legally permissible.

(c) Settlements. –

(1) Consent decrees. – In any civil action with respect to prison conditions, the court shall not enter or approve a consent decree unless it complies with the limitations on relief set forth in subsection (a).

(2) Private settlement agreements. – (A) Nothing in this section shall preclude parties from entering into a private settlement agreement that does not comply with the limitations on relief set forth in subsection (a), if the terms of that agreement are not subject to court enforcement other than the reinstatement of the civil proceeding that the agreement settled.

(B) Nothing in this section shall preclude any party claiming that a private settlement agreement has been breached from seeking in State court any remedy available under State law.

(d) State law remedies. – The limitations on remedies in this section shall not apply to relief entered by a State court based solely upon claims arising under State law.

(e) Procedure for motions affecting prospective relief. –

(1) Generally. – The court shall promptly rule on any motion to modify or terminate prospective relief in a civil action with respect to prison conditions. Mandamus shall lie to remedy any failure to issue a prompt ruling on such a motion.

(2) Automatic stay. – Any motion to modify or terminate prospective relief made under subsection (b) shall operate as a stay during the period –

(A)(i) beginning on the 30th day after such motion is filed, in the case of a motion made under paragraph (1) or (2) of subsection (b); or

(ii) beginning on the 180th day after such motion is filed, in the case of a motion made under any other law; and

(B) ending on the date the court enters a final order ruling on the motion.

(3) **Postponement of automatic stay.** – The court may postpone the effective date of an automatic stay specified in subsection (e)(2)(A) for not more than 60 days for good cause. No postponement shall be permissible because of general congestion of the court's calendar.

(4) **Order blocking the automatic stay.** – Any order staying, suspending, delaying, or barring the operation of the automatic stay described in paragraph (2) (other than an order to postpone the effective date of the automatic stay under paragraph (3)) shall be treated as an order refusing to dissolve or modify an injunction and shall be appealable pursuant to section 1292(a)(1) of title 28, United States Code, regardless of how the order is styled or whether the order is termed a preliminary or a final ruling.

(f) **Special masters.** –

(1) **In general.** – (A) In any civil action in a Federal court with respect to prison conditions, the court may appoint a special master who shall be disinterested and objective and who will give due regard to the public safety, to conduct hearings on the record and prepare proposed findings of fact.

(B) The court shall appoint a special master under this subsection during the remedial phase of the action only upon a finding that the remedial phase will be sufficiently complex to warrant the appointment.

(2) Appointment. – (A) If the court determines that the appointment of a special master is necessary, the court shall request that the defendant institution and the plaintiff each submit a list of not more than 5 persons to serve as a special master.

(B) Each party shall have the opportunity to remove up to 3 persons from the opposing party's list.

(C) The court shall select the master from the persons remaining on the list after the operation of subparagraph (B).

(3) Interlocutory appeal. – Any party shall have the right to an interlocutory appeal of the judge's selection of the special master under this subsection, on the ground of partiality.

(4) Compensation. – The compensation to be allowed to a special master under this section shall be based on an hourly rate not greater than the hourly rate established under section 3006A for payment of court-appointed counsel, plus costs reasonably incurred by the special master. Such compensation and costs shall be paid with funds appropriated to the Judiciary.

(5) Regular review of appointment. – In any civil action with respect to prison conditions in which a special master is appointed under this subsection, the court shall review the appointment of the special master every 6 months to determine whether the services of the special master continue to be required under paragraph (1). In no event shall the appointment of a special master extend beyond the termination of the relief.

(6) Limitations on powers and duties. – A special master appointed under this subsection –

(A) may be authorized by a court to conduct hearings and prepare proposed findings of fact, which shall be made on the record;

(B) shall not make any findings or communications ex parte;

(C) may be authorized by a court to assist in the development of remedial plans; and

(D) may be removed at any time, but shall be relieved of the appointment upon the termination of relief.

(g) Definitions. – As used in this section –

(1) the term "consent decree" means any relief entered by the court that is based in whole or in part upon the consent or acquiescence of the parties but does not include private settlements;

(2) the term "civil action with respect to prison conditions" means any civil proceeding arising under Federal law with respect to the conditions of confinement or the effects of actions by government officials on the lives of persons confined in prison, but does not include habeas corpus proceedings challenging the fact or duration of confinement in prison;

(3) the term "prisoner" means any person subject to incarceration, detention, or admission to any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program;

(4) the term "prisoner release order" includes any order, including a temporary restraining order or preliminary injunctive relief, that has the purpose or effect of reducing or limiting the prison population, or

that directs the release from or nonadmission of prisoners to a prison;

(5) the term "prison" means any Federal, State, or local facility that incarcerates or detains juveniles or adults accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law;

(6) the term "private settlement agreement" means an agreement entered into among the parties that is not subject to judicial enforcement other than the reinstatement of the civil proceeding that the agreement settled;

(7) the term "prospective relief" means all relief other than compensatory monetary damages;

(8) the term "special master" means any person appointed by a Federal court pursuant to Rule 53 of the Federal Rules of Civil Procedure or pursuant to any inherent power of the court to exercise the powers of a master, regardless of the title or description given by the court; and

(9) the term "relief" means all relief in any form that may be granted or approved by the court, and includes consent decrees but does not include private settlement agreements.

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No. 06-85

In The Supreme Court of the United States

MARICOPA COUNTY SHERIFF'S OFFICE, JOE ARPAIO, THE DULY ELECTED SHERIFF OF MARICOPA COUNTY, et al.,

Petitioners,

v.

U.S. DISTRICT COURT FOR THE DISTRICT OF ARIZONA,

Respondent,

DAMIAN HART, et al.,

Real Parties in Interest.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF IN OPPOSITION OF REAL PARTIES IN INTEREST

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QUESTION PRESENTED

Whether the court of appeals erred in declining to issue a writ of mandamus to intervene in the district court's scheduling of an evidentiary hearing that the district court had already begun.

The Real Parties in Interest, a certified class of pretrial detainees incarcerated in the Maricopa County Jail (hereinafter "plaintiffs"), respectfully request that this Court deny the petition for a writ of certiorari, seeking review of the Ninth Circuit's denial of a petition for a writ of mandamus.

STATEMENT OF FACTS

This action, challenging conditions of confinement in the Maricopa County Jail, was brought pursuant to 42 U.S.C. § 1983. Plaintiffs are a certified class of pretrial detainees incarcerated in the Jail. Defendants, petitioners here, are Maricopa County Sheriff Joe Arpaio and the Maricopa County Board of Supervisors. The action seeks only injunctive and declaratory relief; no damages are sought.

The case was settled in 1995 by entry of a consent decree. *See* Pet. App. 4-34. Petitioners have moved to terminate this decree pursuant to the Prison Litigation Reform Act (PLRA), 18 U.S.C. § 3626(b).

Under Circuit precedent, an evidentiary hearing is mandatory when requested by a party in PLRA termination proceedings. *See Gilmore v. California*, 220 F.3d 987, 1008-10 (9th Cir. 2000). The purpose of such a hearing is to allow the district court to "take evidence on the current circumstances at the prison," to determine whether there are current and ongoing violations of federal rights that

would require a continuation of injunctive relief under 18 U.S.C. § 3626(b)(3). *Gilmore*, 220 F.3d at 1010.[1]

In this case, the district court scheduled an evidentiary hearing, and directed that petitioners would present their evidence first. Petitioners completed their evidentiary presentation on January 22, 2004. Plaintiffs have not yet had the opportunity to present any evidence regarding current conditions at the Jail.

Following the close of petitioners' case, the district court referred the case to a magistrate judge for resolution of discovery issues. On September 30, 2005, the magistrate judge ordered petitioners to produce certain documents to plaintiffs. Petitioners' motion for a stay of that order was granted by the district court.

The magistrate judge also directed plaintiffs to file an "omnibus motion" addressing discovery and related issues. Plaintiffs filed their omnibus motion on May 30, 2006. Although the magistrate judge's order required petitioners to respond to this motion within 30 days of its filing, petitioners' request for an extension to 105 days was granted by the district court. Petitioners' response to plaintiffs' omnibus motion is now due on September 12, 2006.

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[1] All Circuits agree that a district court has discretion to hold an evidentiary hearing on a PLRA termination motion. *See, e.g., Cason v. Seckinger*, 231 F.3d 777, 782-83 (11th Cir. 2000); *Cagle v. Hutto*, 177 F.3d 253, 258 (4th Cir. 1999).

REASONS WHY THE PETITION SHOULD BE DENIED

A party's dissatisfaction with the district court's management of its docket does not warrant the extraordinary remedy of mandamus.

In this case, the district court has already begun the evidentiary hearing on petitioners' termination motion that is required by Circuit precedent; petitioners are simply dissatisfied with the district court's scheduling of the conclusion of that hearing. Such matters are uniquely unsuited to the exceptional remedy of mandamus. "This Court repeatedly has observed that the writ of mandamus is an extraordinary remedy, to be reserved for extraordinary situations." *Gulfstream Aerospace Corp. v. Mayacamas Corp.*, 485 U.S. 271, 289 (1988). Indeed, the Court has held that "only exceptional circumstances amounting to a judicial usurpation of power will justify issuance of the writ." *Id.* (internal quotation marks omitted). "Moreover, we have held that the party seeking mandamus has the burden of showing that its right to issuance of the writ is clear and indisputable." *Id.* (internal quotation marks omitted).

Mandamus is virtually never appropriate to compel the performance of a discretionary act; rather, it is "a remedy long restricted, in the main, to situations where ministerial duties of a nondiscretionary nature are involved." *Panama Canal Co. v. Grace Line, Inc.*, 356 U.S. 309, 318 (1958) (citation omitted). "Where a matter is committed to the discretion of a district court, it cannot be said that a litigant's right to a particular result is 'clear and indisputable.'" *Will v. Calvert Fire Ins. Co.*, 437 U.S. 655, 665-66 (1978) (plurality opinion). *See also* Robert L. Stern et al., *Supreme Court Practice* 588 (8th ed. 2002)

("The Court has long refused to issue writs of mandamus or prohibition to control or reverse the discretionary acts of a lower court").

Few things are more completely committed to the sound discretion of the district court than the management of its own docket:

> No one can seriously contend that a busy federal trial judge, confronted both with competing demands on his time for matters properly within his jurisdiction and with inevitable scheduling difficulties because of the unavailability of lawyers, parties, and witnesses, is not entrusted with a wide latitude in setting his own calendar.

Will, 437 U.S. at 665.

In *Will*, this Court reversed the Seventh Circuit's issuance of a writ of mandamus directing the district court "to proceed immediately" to adjudicate a claim before it. 437 U.S. at 657. As the Court observed, "[s]o far as appears, the delay in adjudicating the . . . claim is simply a product of the normal excessive load of business in the District Court, compounded by the unfortunate consequence of making the judge a litigant in this mandamus proceeding." *Id.* at 667 (internal quotation marks omitted). The same is true in this case.

CONCLUSION

For these reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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